

Edward Egan Smith (State Bar No. 169792)  
Michelle Akerman (State Bar No. 265022)  
STEYER LOWENTHAL BOODROOKAS  
ALVAREZ & SMITH LLP  
One California Street, Third Floor  
San Francisco, California 94111  
Telephone: (415) 421-3400  
Facsimile: (415) 421-2234  
E-mail: esmith@steyerlaw.com  
makerman@steyerlaw.com

Attorneys for Plaintiff  
OLD REPUBLIC NATIONAL TITLE  
INSURANCE COMPANY

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

In re

WB COYLE

Debtor(s).

Case No. 13-32412 HLB 7

[Chapter 7]

Adversary No.

**COMPLAINT FOR FRAUD, NON-  
DISCHARGEABILITY**

(JURY TRIAL DEMANDED)

OLD REPUBLIC NATIONAL TITLE  
INSURANCE COMPANY

Plaintiff,

v.

WB COYLE, aka W.B. COYLE, aka  
WILLIAM BERNARD COYLE,

Defendants.

1 Plaintiff Old Republic National Title Insurance Company (“Plaintiff” or “ORNTIC”)  
2 alleges as follows:

3 JURISDICTION AND VENUE

- 4 1. This is an adversary proceeding pursuant to Bankruptcy Rule 7001.  
5 2. Jurisdiction over the claims for relief exists pursuant to 28 U.S.C. section 1334 and 28  
6 U.S.C. section 157.  
7 3. This a request for determination and non-dischargeability of a certain debt owed by debtor  
8 and defendant W.B. Coyle, and therefore, is a core proceeding under 28 U.S.C. section  
9 157(b)(2)(I) and 28 U.S.C. section 157(b)(2)(J).  
10 4. Venue is proper in this action pursuant to 28 U.S.C. section 1409.

11 THE PARTIES

12 5. Plaintiff was and is a corporation duly organized and existing under the laws of the State  
13 of Minnesota, and authorized to do business in the state of California.

14 6. On or about November 4, 2013, John Sollner *et al.* filed an Involuntary Petition in the  
15 above-captioned Court for Debtor and defendant WB Coyle’s, also known as W.B. Coyle or  
16 William Bernard Coyle, (“Debtor” or “Defendant”) bankruptcy under Chapter 7 of Title 11 of the  
17 United States Bankruptcy Code (the “Bankruptcy Proceeding”).

18 7. On or about April 18, 2014, the Court entered an Order for Relief adjudicating Defendant  
19 as a debtor herein.

20 GENERAL ALLEGATIONS

21 8. Plaintiff is informed and believes that Kearny Union, LLC (“Kearny Union”) is a  
22 California limited liability company with a principal place of business in San Francisco,  
23 California, and that at times relevant herein, Defendant was the sole and/or controlling member  
24 and managing member of Kearny Union.

25 9. Plaintiff is informed and believes that Dissolution Properties, LLC (“Dissolution  
26 Properties”) is a California limited liability company with a principal place of business in San  
27 Francisco, California, and that at times relevant herein, Defendant was the sole and/or controlling  
28 member and managing member of Dissolution Properties.

1        10. Plaintiff is informed and believes that on or about July 20, 2010 Defendant executed a  
2 Grant Deed purporting to convey the real property known as 1401-1405 Kearny Street, San  
3 Francisco, California ("Property") to Kearny Union, recorded on July 28, 2010 as Document No.  
4 2010-J005320 in the Official Records of San Francisco ("Kearny Union Deed").

5        11. Plaintiff is further informed and believes that the signature block Defendant signed on the  
6 Kearny Union Deed incorrectly stated that it was executed on behalf of the grantee, Kearny  
7 Union, rather than the grantor, Dissolution Properties. Plaintiff is informed and believes that at  
8 the time Defendant signed the Kearny Union Deed, Defendant was the sole and/or controlling  
9 member and managing member of both the grantor, Dissolution Properties, and the grantee,  
10 Kearny Union.

11        12. Plaintiff is informed and believes that on or about February 13, 2012, Defendant, as the  
12 managing member of Kearny Union, executed a written purchase and sale agreement ("Purchase  
13 Agreement") for the sale of the Property to Telegraph Hill Apartments, LLC ("Telegraph Hill").

14        13. Plaintiff is informed and believes that at the close of escrow under the Purchase  
15 Agreement, Telegraph Hill took title to the Subject Property under a Grant Deed executed by  
16 Defendant on behalf of grantor Kearny Union and recorded in the official records of San  
17 Francisco on February 29, 2012 as document no. 2012-J363810 ("Telegraph Hill Deed").

18        14. Also at the close of escrow, through escrow holder Old Republic Title ("ORTC"), ORTC  
19 issued to Telegraph Hill Plaintiff's CLTA Owner's Policy of Title Insurance, Policy No. A04009-  
20 FTYA-151237 ("Title Policy"), insuring Telegraph Hill as the fee owner of the Property, subject  
21 to the terms, exclusions and exceptions contained in the Title Policy. Plaintiff is informed and  
22 believes that as the title insurer for the transaction, it was the intended recipient of all information  
23 communicated to ORTC and Telegraph Hill by Defendant. Plaintiff brings this action under its  
24 contractual and equitable rights of subrogation and on its own behalf.

25        15. Plaintiff is informed and believes that on or about August 25, 2013, Andrea A. Wirum,  
26 the trustee of the bankruptcy estate of Dissolution in the matter *In Re Dissolution Properties LLC*,  
27 *N.D. Cal. Bankruptcy Case No. 11-33764 HLB* ("Trustee"), initiated an adversary proceeding  
28 against Telegraph Hill and others entitled *Andrea A. Wirum, Trustee v. Telegraph Hill*

1 *Apartments, LLC, et al., N.D. Cal. Bankruptcy Adversary Proceeding No. 13-03204* (“Adversary  
2 Proceeding”). In the Adversary Proceeding, the Trustee sought to quiet title to the Property in the  
3 bankruptcy estate of Dissolution, alleging that the 2010 Kearny Union Deed from Dissolution to  
4 Kearny Union was void because it purported to be executed by the grantee, Kearny Union, rather  
5 than the grantor, Dissolution, and that as a result of the invalidity of the Kearny Union Deed, the  
6 subsequent Telegraph Hill Deed was likewise void.

7 16. As a direct and proximate result of the foregoing, in order to protect its insured Telegraph  
8 Hill under the Title Policy, Plaintiff reasonably paid \$137,500 to the Trustee in exchange for a  
9 release of all claims in the Adversary Proceeding, a dismissal of the Trustee’s adversary  
10 complaint with prejudice, and a Quitclaim Deed from the Trustee to Telegraph Hill for the  
11 Property. Under the terms of the Title Policy, in the event Plaintiff settles or pays claims made  
12 under the Title Policy, it is subrogated to the rights of its insured, Telegraph Hill, and has all the  
13 same rights and remedies with respect to the claim that Telegraph Hill may have against any  
14 person or property, to the extent of the amount of any loss, costs, attorney’s fees and expenses  
15 paid by Plaintiff.

## 16 **FIRST CLAIM FOR RELIEF**

### 17 **Fraud**

18 17. Plaintiff refers to and incorporates herein by reference the preceding paragraphs 1  
19 through 16.

20 18. Plaintiff is informed and believes that Defendant, directly and through his agents,  
21 concealed and failed to disclose that Dissolution Properties had or could assert some right, title,  
22 lien or interest in the Property, and that the Kearny Union Deed by which Kearny Union took title  
23 to the Property was invalid because it was executed by Defendant on behalf of the grantee,  
24 Kearny Union, rather than on behalf of the grantor, Dissolution Properties. Plaintiff is informed  
25 and believes that prior to the close of escrow on the sale of the Property by Kearny Union to  
26 Telegraph Hill, Defendant was aware he had signed the Kearny Union Deed on behalf of the  
27 grantee, Kearny Union, rather than on behalf of the grantor, Dissolution Properties, and that said  
28 fact called into question the validity of the Kearny Union Deed and the subsequent Grant Deed to

1 Telegraph Hill.

2 19. Plaintiff is informed and believes that Defendant misrepresented and actively concealed  
3 the truth concerning the validity of the Kearny Union Deed from Plaintiff with the intent to  
4 defraud and deceive Plaintiff and with the intent to (1) induce Telegraph Hill to enter into the  
5 Purchase Agreement and purchase the Property as alleged herein, and (2) induce Plaintiff to  
6 facilitate the close of escrow for Telegraph Hill's purchase of the Property as alleged herein. At  
7 the time these representations were made and facts concealed by Defendant, and at the time that  
8 Plaintiff and Telegraph Hill took the actions alleged herein, Plaintiff and Telegraph Hill believed  
9 Defendant's representations to be true, and believed that Defendant had disclosed all material  
10 facts concerning the sale of the Property. In reliance on Defendant's representations and  
11 disclosures, Telegraph Hill was induced to and did enter into the Purchase Agreement and  
12 purchase the Property, and caused Plaintiff to issue the Title Policy to Telegraph Hill without  
13 exception for any claim by Dissolution and/or the Trustee. Plaintiff is informed and believes that  
14 had Telegraph Hill and Plaintiff known that the representations were false and known the true  
15 undisclosed facts, they would not have taken such action. Plaintiff is further informed and  
16 believes that Telegraph Hill's and Plaintiff's reliance on Defendant's representations was justified  
17 because they reasonably believed that Defendant would disclose all material facts and would  
18 truthfully represent the liens, encumbrances and claims against the Property.

19 20. As a direct and proximate result of Defendant's intentional misrepresentation and active  
20 concealment and failure to disclose, Plaintiff has been damaged in the amount of \$137,500 plus  
21 interest from July 12, 2014.

22 21. Defendant, in doing the tortious things alleged herein, has caused Plaintiff to bring this  
23 action for which Plaintiff is entitled to attorney's fees under the doctrine of tort of another.

24 22. By engaging in the conduct alleged herein, Defendant has been guilty of oppression,  
25 fraud and malice, thereby entitling Plaintiff to an award of punitive damages in an amount to be  
26 awarded at trial.

27 WHEREFORE, Plaintiff prays for judgment as set forth below.  
28

**SECOND CLAIM FOR RELIEF**  
**Declaratory Relief – Judgment of Non-Dischargeability**

23. Plaintiff refers to and incorporates herein by reference the preceding paragraphs 1 through 22.

24. An actual controversy has arisen and now exists between Plaintiff and Defendant concerning their respective rights and duties, in that Plaintiff contends:

- a. That it has a valid claim against Debtor's bankruptcy estate arising from Debtor's fraudulent conduct alleged herein in an amount according to proof; and
- b. That debtor's underlying debt to Plaintiff, arising from said fraudulent conduct, is not dischargeable in these Bankruptcy Proceedings.

25. Plaintiff is informed and believes that Defendant disputes Plaintiff's contentions and contends that Plaintiff has no valid claim against Debtor's bankruptcy estate arising from Debtor's fraudulent conduct and that any debt owed by Debtor to Plaintiff is dischargeable in bankruptcy.

26. Plaintiff desires a judicial determination of the rights and duties of the parties, and a declaration that: (a) Plaintiff has a valid claim against Debtor's bankruptcy estate arising from Debtor's fraudulent conduct; and (b) the underlying debt owed by Debtor to Plaintiff is not dischargeable pursuant to 11 U.S.C. sections 523(a)(2)(A) and 523(a)(3)(B).

27. A judicial determination is necessary and appropriate under the circumstances in order that Plaintiff may ascertain its rights and duties with respect to Debtor's bankruptcy estate.

WHEREFORE Plaintiff prays for judgment as follows:

1. For damages in an amount according to proof, but not less than \$137,500;
3. For pre-judgment interest at the maximum rate allowable by law from July 12, 2014;
4. For punitive damages;
5. For a declaration that (a) Plaintiff has a valid claim against Debtor's bankruptcy estate arising from Debtor's fraudulent conduct alleged herein in an amount according to proof;

1 and (b) That debtor's underlying debt to Plaintiff, arising from said fraudulent conduct, is not  
2 dischargeable in these Bankruptcy Proceedings.

3 6. For costs of suit incurred herein including reasonable attorneys' fees; and

4 7. For such other and further relief as the court may deem just and proper.

5  
6 Dated: October 28, 2014

STEYER LOWENTHAL BOODROOKAS  
ALVAREZ & SMITH LLP

7  
8 By: /s/ Edward Egan Smith

Edward Egan Smith

Michelle Akerman

Attorneys for Plaintiff

9 OLD REPUBLIC NATIONAL TITLE

10 INSURANCE COMPANY  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 **DEMAND FOR JURY TRIAL**

2  
3 Plaintiff Old Republic National Title Insurance Company hereby demands a trial by jury  
4 of all claims so triable.

5  
6 Dated: October 28, 2014

STEYER LOWENTHAL BOODROOKAS  
ALVAREZ & SMITH LLP

7  
8 By: /s/ Edward Egan Smith

9 Edward Egan Smith  
10 Michelle Akerman  
11 Attorneys for Plaintiff  
12 OLD REPUBLIC NATIONAL TITLE  
13 INSURANCE COMPANY  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28